

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISII

CRIMINAL CASE NO. 101 OF 2013

REPUBLIC.....PROSECUTOR

VERSUS

MILTON BOSIRE OBURI.....ACCUSED

RULING

1. The accused, MILTON BOSIRE OBURI, was charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code (Chapter 63 of the Laws of Kenya). The court was informed on 24th September 2013 that he had murdered TABERIOUS OKEMWA OMBUNA on 21st September 2013 at Upbrige Village, Kisii Central District within Kisii County with others not before the court.

2. The prosecution case was that on 22nd September 2013 at about 5.45am, the deceased was found lying at the main entrance of his homestead. His wife Beatrice Ombuna Onserio (PW 1) testified to this fact. According to Truscilla Nyabeta Mosoko (PW 2), the accused came to her home, which was a changaa, den on the evening of 21st September 2013. He appeared drunk and had a panga. The deceased had also come earlier to take changaa. She however left early to go and sleep. She only heard later that the deceased had passed away. Samwel Onserio Ratemo (PW 3) was also present at PW 2's place and confirmed that deceased was present when the accused, who appeared drunk, came with a panga. The prosecution did not call any further witnesses as I declined the prosecution's application for adjournment when the matter came up for hearing today, 17th July 2018. The prosecution then closed its case.

3. Although the fact of death was established, the cause of death was not proved as the prosecution did not call the doctor who conducted the post mortem. Likewise there was no evidence putting the accused at the scene where the deceased died or even connecting him to the death. That the accused and the deceased were at PW 2's changaa den the previous evening prior to his death is insufficient to put the accused on his defence.

4. I enter a verdict of not guilty under section 306 of the criminal Procedure Code against the accused. Consequently, the accused MILTON BOSIRE OBURI, is acquitted of the murder of TABERIOUS OKEMWA. He is set free unless otherwise lawfully held.

Dated and delivered at Kisii this 17th July 2018.

D.S MAJANJA

Judge

Mr. Otieno, Senior Prosecution Counsel, instructed by Office of Director of Prosecutions

Mr. Kaburi, Advocate for the Accused